



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

4/30/2021 10:46:46 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Health

TITLE-SERIES: 64-45

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: LEAD ABATEMENT LICENSING

CITE STATUTORY AUTHORITY: 16-1-4 and 16-35-4

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) 2427

Section 64-5-1(e) Passed On 4/6/2021 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 1, 2021

This rule shall terminate and have no further force or effect from the following date:

August 01, 2026

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

**Yes**

**April L Robertson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 64  
LEGISLATIVE RULE  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
  
SERIES 45  
LEAD ABATEMENT LICENSING

**§64-45-1. General.**

1.1. Scope. - This legislative rule establishes procedures and standards for the licensure and training of persons who engage in activities related to lead abatement and for the operation of lead abatement projects. This rule should be read in conjunction with the definitions and provisions of W. Va. Code §16-35-1 *et seq.* (Lead Abatement).

1.2. Authority -- W. Va. Code §16-1-4 and §16-35-4.

1.3. Filing Date. -- April 30, 2021.

1.4. Effective Date. -- July 1, 2021.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon August 1, 2026.

**§64-45-2. Application and Enforcement.**

2.1. Applications. -- This rule applies to persons who conduct lead abatement projects in target housing or child-occupied facilities, and requires licensure of lead contractors, inspectors, risk assessors, workers, supervisors, and designers.

2.2. Enforcement. -- This rule shall be enforced by the commissioner of the West Virginia bureau for public health.

**§64-45-3. Definitions.**

3.1. Abatement. -- Any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

3.1.a. The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

3.1.b. All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures;

3.1.c. Projects for which there is a written contract to permanently eliminate lead-based paint hazards from a dwelling unit or child-occupied building;

3.1.d. Projects involving the permanent elimination of lead-based paint or lead contaminated soil;

3.1.e. Projects involving the permanent elimination of lead-based paint hazards or lead contaminated soil that are conducted by persons who advertise or hold themselves out to conduct lead related activities; and

3.1.f. Projects involving the permanent elimination of lead-based paint hazards that are conducted in response to federal, state, or local abatement orders.

3.2. EPA. -- The United States environmental protection agency.

3.3. HEPA. -- High efficiency particulate air.

3.4. Lead abatement contractor. -- A person engaged by oral or written contract to perform a lead abatement project.

3.5. Lead-based paint. -- Paint or other surfacing coatings that contain lead at or in excess of 5000 parts per million, or 0.5% by weight, or 1.0 mg/cm<sup>2</sup>.

3.6. Lead-contaminated dust. -- Surface dust containing lead at or in excess of 10 micrograms per square foot for floors, at or in excess of 100 micrograms per square foot for interior window sills, at or in excess of 100 micrograms per square foot for window troughs and exterior concrete or other rough surfaces.

3.7. Lead-contaminated soil. -- Soil containing lead at or in excess of 1200 parts per million, or 400 parts per million for bare, high-contact play areas.

3.8. Lead-contaminated waste. -- Any discarded materials with lead toxicity equal to or in excess of five parts per million as determined by the total characteristic leachate procedure (TCLP).

3.9. License. -- A document authorizing an individual to perform specific lead abatement activities.

3.10. Public building. -- Any building that is generally open to the public, including but not limited to museums, airport terminals, hospitals, stores, restaurants, convention centers and other office buildings, corporate facilities and government buildings that do not expressly prohibit access to the public.

3.11. Target Housing. -- Residential structures built prior to one thousand nine hundred seventy-eight or residential structures that are confirmed by inspection to contain lead-based paint.

3.12. XRF analyzer. -- An instrument that determines lead concentration in milligrams per square centimeter (mg/cm<sup>2</sup>) using the principle of x-ray fluorescence (XRF).

#### **§64-45-4. Initial and Renewal License.**

4.1. Initial license.

4.1.a. Applicants for licensure as a lead inspector, risk assessor, worker, supervisor, designer, or contractor shall submit to the commissioner an application which shall include:

4.1.a.1. Proof of passage of an applicable state accredited lead training course. A copy of the certificate indicating the date on which training was completed, the location at which training was conducted, the signature of the instructor, and examination score is required;

4.1.a.2. Proof of passage of an examination from a state accredited discipline examiner for the license discipline. A copy of the examination certificate indicating the applicant's name, the date on which the examination took place, the location of the examination, the license discipline and the score of the examination is required;

4.1.a.3. The applicant's date of birth, social security number, current address, driver's license number and telephone phone number. Applicants shall be at least 18 years of age;

4.1.a.4. The signature of the applicant;

4.1.a.5. A history of all environmental enforcement actions taken against the applicant by any federal or state agency or court;

4.1.a.6. Attachment of all applicable license fees. A schedule of fees is set forth in Table A of this rule;

4.1.a.7. Evidence that an applicant for a lead supervisor license has one year of experience as a lead abatement worker, or at least two years of experience in a related field, such as lead, asbestos, or environmental remediation work, or the building trades;

4.1.a.8. Evidence that an applicant for a lead risk assessors license possesses a valid lead inspector's license and one of the following:

4.1.a.8.A. A bachelor's degree and one year of experience in a related field, such as lead, asbestos, environmental remediation work or construction;

4.1.a.8.B. An associate degree and two-year experience in a related field such as lead, asbestos, environmental remediation work or construction;

4.1.a.8.C. A certification as an industrial hygienist, professional engineer, registered architect, registered sanitarian, or certification in a related engineering/ health/environmental field, such as safety professional, environmental scientist; or

4.1.a.8.D. A high-school diploma or equivalent, and at least three years of experience in a related field, such as lead, asbestos, environmental remediation work or construction;

4.1.a.9. Evidence that an applicant for a project designer license:

4.1.a.9.A. Possesses a bachelor's degree in engineering, architecture, or a related profession and one year of experience in building construction and design or a related field; or

4.1.a.9.B. Four years experience in building construction and design or a related field;  
and

4.1.a.9.C. Proof of passage of a lead supervisor training course.

4.1.a.10. Evidence that an applicant for a contractor license has a licensed supervisor on staff.

4.1.b. Applicants and their employers or agents shall demonstrate to the satisfaction of the commissioner that the applicant is familiar with and capable of complying fully with all applicable requirements, procedures and standards of the EPA, OSHA and of the State agencies of the bureau for public health, division of natural resources, bureau of commerce, division of labor, air quality board and division of environmental protection covering any part of a lead abatement project. An applicant who has passed an applicable state accredited training course and passed an examination from a discipline examiner meets this requirement.

4.1.c. The commissioner may deny a license and retain the license fee if the applicant fails to

satisfy the requirements of this section. A written notice of denial and an opportunity for reapplication shall be afforded to all applicants.

4.1.d. Licenses issued under this rule expire one year from the last day of the month in which they were issued.

4.2. Renewal application.

4.2.a. Prior to the expiration date shown on the license, each licensee who desires to retain a valid license shall submit a renewal application, appropriate refresher course certification, and all applicable fees. Licensees should apply for renewal no less than 10 days prior to the expiration of the license to avoid a temporary lapse of license. A schedule of license fees is set forth in Table A of this rule.

4.2.b. Applicants shall submit proof of passage of an applicable State accredited refresher course every third year from the date of the original training and certification.

**§64-45-5. Licensed Lead Abatement Contractor Duties.**

5.1. A licensed lead abatement contractor shall:

5.1.a. Ensure that each contractors' employees or agents who will come into contact with lead or who will be responsible for a lead abatement project is properly licensed;

5.1.b. Ensure that each lead abatement project is supervised by an on-site licensed lead supervisor;

5.1.c. Notify the division and all other entities as may be required by state or federal law at least 10 days prior to the commencement of each lead abatement project. Notification to the division shall be by certified mail or by hand-delivery to the division;

5.1.d. Ensure that a lead abatement project is designed by a licensed lead abatement designer;

5.1.e. Ensure that each lead abatement project meets the minimum clearance standards as set forth in section 11 of this rule;

5.1.f. Ensure proper disposal of lead contaminated waste in accordance with applicable federal, state, and local laws, rules, and regulations;

5.1.g. Keep a record of each lead abatement project. The records shall include:

5.1.g.1. The name, address and lead abatement license number of the individual who supervised the lead abatement project and of each employee or agent who worked on the project;

5.1.g.2. The location and a description of the lead abatement project and the amount of lead material that was removed;

5.1.g.3. The starting and completion dates of each lead abatement project and a summary of the procedures that were used to comply with all federal and state standards;

5.1.g.4. The name and address of each disposal site where waste containing lead was deposited and the disposal site receipts. Contractors shall use disposal sites which are in conformance with applicable federal, state, and local laws and regulations; and

5.1.g.5. The clearance sample results or air monitoring results required by section 11 of this rule for each lead abatement project. The records shall include:

5.1.g.5.A. The name and signature of the lead inspector who collected the clearance samples;

5.1.g.5.B. Where the samples were collected;

5.1.g.5.C. The date of collection;

5.1.g.5.D. The name and address of all laboratories analyzing the samples;

5.1.g.5.E. The date of analysis;

5.1.g.5.F. The results of analysis;

5.1.g.5.G. The method of analysis;

5.1.g.5.H. The name and signature of the person performing the analysis; and

5.1.g.5.I. Certification that the laboratory is EPA certified to analyze lead samples.

5.2. The records required by this section shall be available to the state agencies of the bureau for public health, division of natural resources, division of environmental protection, division of labor and air quality board upon request during normal business hours. Records for current projects shall be immediately available. For completed projects, the commissioner may afford the contractor a reasonable time to comply with the requests, depending upon the length of time since the project's completion and whether or not the advance notice might adversely affect an investigation being conducted by any of the agencies. Records required by this section shall be kept for at least three years.

#### **§64-45-6. Lead Inspector Duties.**

6.1. A licensed lead inspector shall:

6.1.a. Thoroughly inspect interior and exterior surfaces suspected of containing lead that may be affected by renovation or demolition, and sample the materials for lead content or confirm lead content with an XRF analyzer.

6.1.b. Generate a written report that at a minimum:

6.1.b.1. Identifies by narrative any sampling location where the presence of lead containing material has been confirmed;

6.1.b.2. Details the location and amount of all materials that contain lead;

6.1.b.3. Lists analysis, XRF results, or both for all samples;

6.1.b.4. Includes drawings and narrative descriptions of locations of samples and/or XRF readings; and

6.1.b.5. Includes a statement that the inspection is not a risk assessment.

6.1.c. Adequately sample each area or room of an abatement project for clearance to verify that dust, soil and waste material lead levels are below the contamination standards as defined in sections 3.6, 3.7 and 3.8 of this rule.

**§64-45-7. Lead Abatement Designer Duties.**

7.1. A licensed lead abatement designer shall generate a written report that provides:

7.1.a. A chronological time frame for each facet of the abatement activity;

7.1.b. The name and address of the building or structure where the lead abatement project is to occur;

7.1.c. The name, address, phone number, and lead abatement training certificates and licenses for the project designer;

7.1.d. A schematic floor plan showing the lead abatement project area, including a description of the characteristics of the material;

7.1.e. A statement identifying the abatement activity as repair, removal, encapsulation, or enclosure;

7.1.f. A schematic floor plan of the project area which shows the physical dimensions, entrance, exit, windows, decontamination unit, load-out area, emergency exits, placement of the HEPA exhaust air filtration units, if applicable, and any measuring devices, warning signs, and barrier tape;

7.1.g. The sampling protocol for project clearance for re-occupancy, including the number of samples, collection points and the analytical method to be employed;

7.1.h. A schematic of the heating, ventilation and air-conditioning system shut-offs, electrical power, water source, fire exits, fire extinguisher, fire alarm, telephone, tool and equipment room, supply box, project field office, bathrooms and decontamination area;

7.1.i. A description of the work procedures to be used;

7.1.j. A description of the materials and tools to be used in the abatement project; and

7.1.k. An occupant protection plan in accordance with subsection 16.1 and 16.4 of this rule.

**§64-45-8. Lead Risk Assessor Duties.**

8.1. A licensed lead abatement risk assessor shall generate a written risk assessment report that provides:

8.1.a. Background information regarding the age, condition and physical characteristics of the structure and residential use patterns;

8.1.b. A schematic site plan showing each room within the structure, its use and the location and condition of lead-based paint;

8.1.c. A copy of any previous test results or inspections regarding lead-based paint or other assessments for lead hazards;

8.1.d. An assessment of the potential routes of lead exposure for occupants or lead abatement professionals, which is based upon adequate dust, water, soil, and paint chip sampling; and

8.1.e. A detailed description of recommended control strategies for reducing lead-based paint hazards and justification for the strategy selected, the locations where the recommended actions should take place, and a suggested prioritization for taking each action based on the degree of the hazard.

8.2. The risk assessment shall be maintained by the risk assessor or his or her firm for a period of three years.

**§64-45-9. Prohibited Lead Abatement Project Methods.**

9.1. The following lead abatement project methods are prohibited:

9.1.a. The use of open flame burning, torching, fossil fuel-powered heat plates, welding, cutting torches, and heat guns operating at temperatures greater than 1,100 degrees F as a means of lead-based paint removal;

9.1.b. Uncontained machine sanding or grinding;

9.1.c. Uncontained hydro-blasting and high-pressure water washing;

9.1.d. Uncontained abrasive blasting or sandblasting;

9.1.e. Chemical paint removers that contain methylene chloride; and

9.1.f. Dry scraping lead-based paint, except for areas around electrical outlets.

**§64-45-10. Recommended Lead Abatement Project Methods.**

10.1. The following lead abatement project methods are recommended:

10.1.a. Electric-powered flameless heat guns operating below 1,100 degrees F, provided that proper respiratory protection is used;

10.1.b. Mechanical HEPA sanding, HEPA vacuum blasting and HEPA vacuuming needle guns;

10.1.c. Wet scraping, provided that no electrical hazards are present while doing so;

10.1.d. The removal of building components to be stripped of lead-based paint off site: *Provided*, That dust generation during the removal and transportation of the building components is kept to a minimum;

10.1.e. Chemical removal methods which do not contain methylene chloride: *Provided*, That product material safety data sheet recommendations for safety, and OSHA regulations are implemented;

10.1.f. The enclosure of building components that contain lead-based paint, provided that the enclosure material becomes a permanent part of the building structure and is properly sealed to ensure that lead dust is permanently contained;

10.1.g. Encapsulation of lead-based paint, provided that the encapsulating material becomes a permanent part of the building component and will be guaranteed by the lead abatement company and



manufacturer from defect for a minimum of 20 years; and

10.1.h. Total removal of lead-contaminated soil or the covering of lead-contaminated areas with a suitable material that will limit exposure. For purposes of this subdivision, suitable material includes but is not limited to stone, pavement, gravel, or vegetative cover.

**§64-45-11. Lead Abatement Project Clearance Levels and Minimum Sampling.**

11.1. A licensed lead inspector shall conduct a visual inspection at the conclusion of a lead abatement project and collect samples as set forth in Table D of this rule.

11.2. A lead abatement project shall be ready for occupation when the following clearance levels of lead are obtained:

11.2.a. Below 10 micrograms of lead per square foot for interior floors or other horizontal surfaces;

11.2.b. Below 100 micrograms of lead per square foot for interior window sills;

11.2.c. Below 100 micrograms of lead per square foot for window troughs and exterior concrete or other rough surfaces;

11.2.d. Below 400 parts per million for bare soil areas that are child play areas;

11.2.e. Below 1200 parts per million for residential bare soil areas; and

11.2.f. A total characteristic leachate procedure (TCLP) below five parts per million lead toxicity for discarded building materials.

11.3. The minimum numbers of samples to be obtained from a lead abatement project area are defined in Table D of this rule.

11.4. In addition to the required number of samples as defined in Table D of this rule, a licensed lead inspector will obtain one soil sample for each 400 square feet of bare soil area of a lead abatement project and one composite sample from homogeneous building materials that is representative of the waste stream.

**§64-45-12. Exemption from Notification and Licensing.**

Exemption from notification and licensure is as provided in W. Va. Code §6-35-7.

**§64-45-13. Notification of Elevated Blood Lead Levels.**

Any person, contractor or laboratory shall notify the commissioner of any medically confirmed elevated blood-lead levels within 36 hours of discovery.

**§64-45-14. Notification of Lead Abatement Projects.**

Each owner or other person responsible for the operation of a building, facility, residence or structure where a lead abatement project is to occur shall notify the division 10 days prior to commencement of the project and pay the notification fee set forth in Table B of this rule.

**§64-45-15. Accreditation or Reaccreditation of Lead Abatement Initial or Refresher Training Courses.**

15.1. Applicants for accreditation or reaccreditation as lead abatement training providers shall submit the following:

- 15.1.a. The name, address, and telephone number of the lead training provider;
- 15.1.b. A full description of the course curriculum;
- 15.1.c. A list of instructors, their resumes, and qualifications;
- 15.1.d. A copy of the course examination;
- 15.1.e. The annual lead training course accreditation fee set forth in Table C of this rule;
- 15.1.f. Any additional information required by W. Va. Code §16-35-10; and
- 15.1.g. Any and all applications or certifications required by the commissioner.

15.2. Initial or refresher lead abatement training providers to be accredited or reaccredited by the bureau for public health shall comply with sections 16.1 and 16.4 of this rule including, but not limited to curriculum, length of training, record keeping and training manager and instructor qualifications.

**§64-45-16. Applicable Federal Standards.**

All individuals licensed under this rule shall comply with the following applicable federal standards, which are hereby incorporated in this rule by reference:

16.1. EPA: Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. 40 CFR Part 745.227. (July 9, 2019).

16.2. OSHA: Lead Exposure in Construction; Interim Final Rule. 29 CFR 1926.62 (May 14, 2019); and

16.3. HUD: Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (July 2012).

16.4. EPA: Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. 40 CFR Part 745.225 (b),(c),(d),(e),(f),(g),(h),(i).

**§64-45-17. Penalties.**

17.1. The commissioner may, depending upon the severity of the violation and upon the degree of health hazard created, suspend or revoke the license of a contractor, inspector, designer, risk assessor, supervisor, or worker if the licensee:

- 17.1.a. Fraudulently or deceptively obtains or attempts to obtain a license;
- 17.1.b. Fails at any time to meet the qualifications for license or to comply with the requirements of W. Va. Code §16-35-1 *et seq.* or this rule;
- 17.1.c. Knowingly falsifies or attempts to falsify documents related to a lead abatement project

or license;

17.1.d. Fails to meet the applicable federal or state standard for lead abatement; or

17.1.e. Fails to remit an assessed civil penalty or fine.

17.2. The commissioner may suspend, or revoke the accreditation or reaccreditation of an initial or refresher lead training provider if the training provider fails to meet the requirements of this rule as outlined in sections 16.1 and 16.4.

17.3. The commissioner may investigate all alleged violations of this rule or of W. Va. Code §16-35-1 *et seq.* reported to the division. Upon the finding of a violation in connection with a lead abatement project the commissioner shall, depending upon the severity of the violation and upon the degree of health hazard created, initiate an appropriate enforcement action which may include the issuance of a cease and desist order directing that all work on the project be halted immediately. Posting of the cease and desist order on the project site constitutes notice of its contents to the property owner and all individuals working on the lead abatement project. Where practicable, however, the commissioner shall deliver a copy of the order by certified mail, return receipt requested, to the property owner and to the contractor.

17.4. Fines and penalties are as provided in W. Va. Code §16-35-13.

#### **§64-45-18. Administrative Due Process.**

Those individuals adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the bureau for public health's rule, Rules and Procedures for Contested Case Hearings and Declaratory Rulings, 64CSR1.

**64CSR45**

**TABLE 65-45 A**

**LICENSE FEES**

Type of License	Fee
Worker	\$50.00
Supervisor	\$100.00
Inspector	\$100.00
Risk Assessor	\$100.00
Project Designer	\$100.00
Contractor	\$300.00

**TABLE 65-45 B**

**NOTIFICATION FEE**

All Projects	\$60.00
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**TABLE 65-45 C**

**ACCREDITATION FEES FOR LEAD TRAINING PROVIDERS**

Initial Accreditation	\$1,000.00 per Discipline	(max. \$3,000.00)
Annual Reaccreditation	\$500.00 per Discipline	(max. \$1,500.00)

TABLE 64-45 D

## MINIMUM NUMBER AND LOCATION OF SINGLE-SURFACE DUST SAMPLES

Clearance Category	Category Description	Number and location of Single-Surface Wipe Samples in Each Area <sup>1</sup>	Number and Location of Composite Wipe Samples
1	Interior treatments  No containment within dwelling	Two dust samples from at least four rooms in dwelling (treated or untreated):  ★One interior window sill or window trough, alternating between rooms.  ★One floor.  AND  ★For common areas, one for every 2,000 ft <sup>2</sup> of a common area room floor (if present)	Three composite samples for every batch of four rooms (whether treated or untreated):  ★ One floor composite.  ★ One interior window sill composite  ★ One window trough composite.  AND  ★ For common areas, one floor subsample for every 2,000 ft <sup>2</sup> (if present); up to 8,000 ft <sup>2</sup> can be sampled for every composite.
2	Interior treatments  With containment (Plastic sheeting as airlock on doors between treated and untreated areas)	Same as Category 1 but only in every <i>treated</i> room (up to four rooms)  AND  One floor sample outside the containment area but within 10 feet of the airlock to determine the effectiveness of the containment system. This extra single-surface sample is recommended in 20 percent of the treated dwellings in multifamily housing and all single-family homes.  ★ For common areas, one floor sample for every 2,000 ft <sup>2</sup> and one floor sample outside containment.	Same as Category 1 but only in every <i>treated</i> room  AND  One floor sample outside the containment area but within 10 feet of the airlock to determine the effectiveness of the containment system. This extra single-surface sample is recommended in 20 percent of the treated dwellings in multifamily housing and all single-family homes.  ★ For common areas, one floor subsample for every 2,000 ft <sup>2</sup> (up to 8,000 ft <sup>2</sup> for each composite) and one floor sample outside containment.
3	Exterior treatments	Two dust samples as follows:  ★At least one dust sample on a horizontal surface in part of the outdoor living area (e.g., a porch floor or entryway).  ★One window trough sample on each floor where exterior work was performed. An additional trough sample should be collected from a few lower floors to determine if troughs below the area were contaminated by the work above.	Two dust samples as follows:  ★One composite on a horizontal surface in part of the outdoor living area (e.g., a porch floor or entryway).  ★One window trough composite for every four floors where exterior work was performed, including lower floors where exterior work was not done, if present.
4	Routine maintenance work	At least 1 floor dust sample for every 20 high-hazard jobs near the work area.	Same as single-surface sampling.
5	Soil treatment	One dust sample from the entryway.	One dust sample from the entryway.

<sup>1</sup> • A room includes a hallway or a stairway. If no window, just one floor sample must be collected. When a closet is treated, the room to which it is attached should be tested. A closet is not considered to be a separate room. If all rooms received similar treatments and cleaning, only four rooms need to be sampled for clearance purposes. More rooms may need to be sampled in larger dwellings. The room to be sampled should be selected based on where most of the dust-generating work was done or in the judgment of the clearance examiner.